

PETITION OF APPEAL FROM DECISION OF
MIAMI-DADE COUNTY COMMUNITY ZONING APPEALS BOARD
TO THE BOARD OF COUNTY COMMISSIONERS

CHECKED BY B AMOUNT OF FEE 1,227.51
RECEIPT # 1200518356

DATE HEARD: 12 / 13 / 05

BY CZAB # 14-48-05

RECEIVED
DEC 30 2005

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.

BY B
DATE RECEIVED STAMP

This Appeal Form must be completed in accordance with the "Instruction for Filing an Appeal" and in accordance with Chapter 33 of the Code of Miami-Dade County, Florida, and return must be made to the Department on or before the Deadline Date prescribed for the Appeal.

RE: Hearing No. 05-9CZ14-3/04-449/ Resolution No. CZAB14-48-05

Filed in the name of (Applicant) Lazaro Bombalier

Name of Appellant, if other than applicant _____

Address/Location of APPELLANT'S property: The west side of SW 132 Avenue & approximately 660 ft. north of SW 192 street, Miami-Dade County, Florida
Application, or part of Application being Appealed (Explanation):

Entire Appealable Application

Appellant (name): Lazaro Bombalier
hereby appeals the decision of the Miami-Dade County Community Zoning Appeals Board with reference to the above subject matter, and in accordance with the provisions contained in Chapter 33 of the Code of Miami-Dade County, Florida, hereby makes application to the Board of County Commissioners for review of said decision. The grounds and reasons supporting the reversal of the ruling of the Community Zoning Appeals Board are as follows:
(State in brief and concise language)

See attached Exhibit "A"

APPELLANT MUST SIGN THIS PAGE

Date: _____ day of December, year: 2005

X Signed _____

Lazaro Bombalier

Print Name

18920 SW 132 Avenue, Miami, FL

Mailing Address

(305) 970-4416

Phone

Fax

REPRESENTATIVE'S AFFIDAVIT

If you are filing as representative of an association or other entity, so indicate:

Attorney for Lazaro Bombalier

Representing

Signature

Calisto Padua, Esq

Print Name

2665 S. Birchmore Dr. Ste. 420

Address

Miami

FL

33133

City

State

Zip

305-854-0800

Telephone Number

Subscribed and Sworn to before me on the 30 day of December, year 2005

Notary Public

Subscribed and Sworn to before me this 30 day of December 2005

(stamp/seal)

Notary Commission expires:

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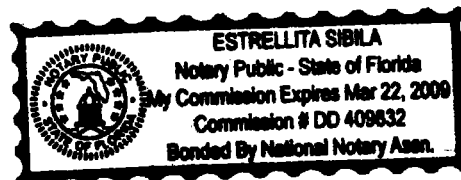
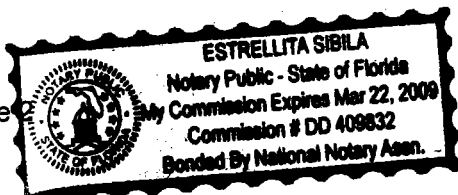


EXHIBIT A

Appeal of Resolution No. CZAB14-48-05 Lazaro Bombalier, Appellant

On December 13, 2005, Community Zoning Appeals Board (the "Board") passed and adopted Resolution CZAB 14-48-05 (copy attached) denying

- (1) A district boundary change from AU to EU-M
- (2) Request to permit a single-family residence on proposed Lot 1, Block 2 setback 65' from the front (east) property line (50' maximum permitted).
- (3) Request to waive the zoning regulations requiring half section line rights-of-way to be 70' wide; to permit 25' (35' required) of dedication for the west half of S.W. 132 Avenue.
- (4) Request to waive the subdivision regulations requiring sidewalks and street lighting in all residential areas; to permit the subject property with no sidewalks and street lighting.

(collectively the "Request")

The Board's decision was arbitrary and not based on substantial competent evidence.

The substantial competent evidence on the record reflects that the proposed Request is consistent with the property's Estate Density land use designation of the LUP Map of the County's CDMP and compatible with existing EU-M development immediately across from the property, see attached Miami-Dade County Department of Planning & Zoning recommendations to Community Council No. 14.

RESOLUTION NO. CZAB14-48-05

WHEREAS, **LAZARO BOMBALIER** applied for the following:

- (1) AU to EU-M
- (2) Applicant is requesting to permit a single-family residence on proposed Lot 1, Block 2 setback 65' from the front (east) property line (50' maximum permitted).
- (3) Applicant is requesting to waive the zoning regulations requiring half section line rights-of-way to be 70' wide; to permit 25' (35' required) of dedication for the west half of S.W. 132 Avenue.
- (4) NON-USE VARIANCE OF SUBDIVISION REGULATIONS to permit a residential development without sidewalks and street lighting (sidewalks & street lights required).

Upon a demonstration that the applicable standards have been satisfied, approval of request #2 may be considered under §33-311(A)(14) (Alternative Site Development Option) and requests #2 & #3 may be considered under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance) and approval of request #4 may be considered under Chapter 28 §19A of the Public Works Code.

Plans are on file and may be examined in the Zoning Department entitled "Bombalier," as prepared by Kelley Engineers of Dade consisting of Sheet 1 dated stamped received 9/15/05 and Sheet A-1 dated stamped received 12/20/04. Plans may be modified at public hearing.

SUBJECT PROPERTY: The south ½ of the east ½ of Tract 14, in the NW ¼ of Section 2, Township 56 South, Range 39 East of TROPICO, Plat book 2, Page 57 AND: The north ½ of the east ½ of Tract 14, in the NW ¼ of Section 2, Township 56 South, Range 39 East of TROPICO, Plat book 2, Page 57.

LOCATION: The west side of S.W. 132 Avenue & approximately 660' north of S.W. 192 Street, Miami-Dade County, Florida, and

WHEREAS, a public hearing of the Miami-Dade County Community Zoning Appeals Board 14 was advertised and held, as required by law, and all interested parties concerned in the matter were given an opportunity to be heard, and

WHEREAS, upon due and proper consideration having been given to the matter, it is the opinion of this Board that the requests for a district boundary change (Item #1), to permit a single-family residence on proposed Lot 1, Block 2 setback 65' from the front (east) property line (Item #2), to waive the zoning regulations requiring half section line rights-of-way to be 70' wide; to permit 25' of dedication for the west half of S.W. 132 Avenue

(Item #3), and to permit a non-use variance of subdivision regulations to permit a residential development without sidewalks and street lighting (Item #4) would not be compatible with the neighborhood and area concerned and would be in conflict with the principle and intent of the plan for the development of Miami-Dade County, Florida, and should be denied, and

WHEREAS, a motion to deny the entire application with prejudice was offered by Dawn Lee Blakeslee, seconded by Samuel L. Ballinger, and upon a poll of the members present the vote was as follows:

Samuel L. Ballinger	aye	Rose L. Evans-Coleman	absent
Wilbur B. Bell	nay	Don Jones	absent
Dawn Lee Blakeslee	aye	Curtis Lawrence	nay
Dr. Pat Wade	aye		

NOW THEREFORE BE IT RESOLVED by the Miami-Dade County Community Zoning Appeals Board 14, that the requests for a district boundary change (Item #1), to permit a single-family residence on proposed Lot 1, Block 2 setback 65' from the front (east) property line (Item #2), to waive the zoning regulations requiring half section line rights-of-way to be 70' wide; to permit 25' of dedication for the west half of S.W. 132 Avenue (Item #3), and to permit a non-use variance of subdivision regulations to permit a residential development without sidewalks and street lighting (Item #4) be and the same are hereby denied with prejudice.

The Director is hereby authorized to make the necessary notations upon the records of the Miami-Dade County Department of Planning and Zoning.

PASSED AND ADOPTED this 13th day of December, 2005.

Hearing No. 05-9-CZ14-3
Is

DEPARTMENT OF

Planning & Zoning

MIAMI-DADE
COUNTY

Facsimile Telephone Number: () 554-2516

To: Pedro Hernandez

From: Zoning Evaluation Unit J. Vital

Date 12/8/05 # of Pages: Time:
Including Cover Sheet

RE: CZ14 (D4-449) ON 12/13/05

Please call to confirm receipt.

If you do not receive all of the pages as indicated above, please call the number provided below as soon as possible.

Telephone: (305) 375-2566

Fax: (305) 679-7548

**MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING
RECOMMENDATION TO COMMUNITY COUNCIL No. 14**

APPLICANT: Lazaro Bombalier

PH: Z04-449 (05-9-CZ14-3)

SECTION: 2-56-39

DATE: December 13, 2005

COMMISSION DISTRICT: 8

ITEM NO.: A

A. INTRODUCTION

o REQUESTS:

(1) AU to EU-M

(2) Applicant is requesting to permit a single-family residence on proposed Lot 1, Block 2 setback 65' from the front (east) property line (50' maximum permitted).

(3) Applicant is requesting to waive the zoning regulations requiring half section line rights-of-way to be 70' wide; to permit 25' (35' required) of dedication for the west half of S.W. 132 Avenue.

(4) Applicant is requesting to waive the subdivision regulations requiring sidewalks and street lighting in all residential areas; to permit the subject property with no sidewalks and street lighting.

Upon a demonstration that the applicable standards have been satisfied, approval of request #2 may be considered under §33-311(A)(14) (Alternative Site Development Option) and requests #2 & #3 may be considered under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance) and approval of request #4 may be considered under Chapter 28 §19A of the Public Works Code.

Plans are on file and may be examined in the Zoning Department entitled "Bombalier," as prepared by Kelley Engineers of Dade consisting of Sheet 1 dated stamped received 9/15/05 and Sheet A-1 dated stamped received 12/20/04. Plans may be modified at public hearing.

o SUMMARY OF REQUESTS:

The requests will allow the applicant to change the zoning on the property from AU, Agricultural District, to EU-M, Estate Modified One Family District. Requests to allow a single-family residence on a proposed lot to setback more than permitted, to permit less dedication for the west half of S.W. 132 Avenue, and to permit the subject property with no sidewalks and street lighting are also being sought.

o LOCATION:

The west side of S.W. 132 Avenue & approximately 660' north of S.W. 192 Street, Miami-Dade County, Florida.

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o **SIZE:** 4.97 Acres

o **IMPACT:**

The approval of the requested district boundary change will provide 12 additional housing units for the community. The rezoning of this site will have an impact on the schools, water and sewer services, and traffic in the area.

B. ZONING HEARINGS HISTORY:

In 1986, pursuant to Resolution Z-266-86, the Board of County Commissioners granted a variance to subdivide the subject parcel into two building sites with less frontage and area than required. In 1998, pursuant to Resolution CZAB14-9-98, the applicant withdrew an application for a Special Exception to permit a proposed religious facility with non-use variances of setback and parking requirements.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

1. The Adopted 2005 and 2015 Land Use Plan designates the subject property as being within the Urban Development Boundary for **Estate Density**. This density range is typically characterized by detached estates which utilize only a small portion of the total parcel. Clustering, and a variety of housing types may, however, be authorized. The residential densities allowed in this category shall range from a minimum of 1.0 to a maximum of 2.5 dwelling units per gross acre. The subject property is located approximately one-half (1/2) mile east of and within the Urban Development Boundary line.
2. Some existing uses and zoning are not specifically depicted on the LUP map. All existing lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this chapter titled "Concepts and Limitations of the Land Use Plan Map". The limitations referenced in this paragraph pertain to existing zoning districts and uses. All approval of new residential locations must be consistent with the LUP map or the specific exceptions provided in the various LUP map categories, the objectives and policies of this Plan.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE PLAN DESIGNATION

Subject Property:

AU; single-family residence

Estate Density Residential, 1 to 2.5 du/a

Surrounding Properties:

NORTH: AU; horse ranch

Estate Density Residential, 1 to 2.5 du/a

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SOUTH:	AU; single-family residences	Estate Density Residential, 1 to 2.5 dua
EAST:	EU-M; single-family residences	Estate Density Residential, 1 to 2.5 dua
WEST:	AU; plant nursery	Estate Density Residential, 1 to 2.5 dua

The subject property is located on the west side of S.W. 132 Avenue & approximately 660' north of S.W. 192 Street. The area where the subject property lies is characterized by single-family residences, and agricultural uses.

E. SITE AND BUILDINGS:

Site Plan Review:	(Plans submitted)
Scale/Utilization of Site:	Unacceptable
Location of Buildings:	N/A
Compatibility:	Unacceptable
Landscape Treatment:	N/A
Open Space:	N/A
Buffering:	N/A
Access:	Unacceptable
Parking Layout/Circulation:	N/A
Visibility/Visual Screening:	N/A
Energy Considerations:	N/A
Roof Installations:	N/A
Service Areas:	N/A
Signage:	N/A
Urban Design:	N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Section 33-311(F): In evaluating an application for a **district boundary change**, the Board shall take into consideration, among other factors the extent to which:

- (1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan for Miami-Dade County, Florida; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered;
- (2) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the environmental and ~~natural~~ resources of Miami-Dade County, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;
- (3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of Miami-Dade County, Florida;

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- (4) The development permitted by the application, if granted, will efficiently use or unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction;
- (5) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

Section 33-311(A)(14) Alternative Site Development Option for Single Family and Duplex Dwellings

The following standards are alternatives to the generalized standards contained in zoning regulations governing specified zoning districts:

(c) Setbacks for a single family or duplex dwelling shall be approved after public hearing upon demonstration of the following:

1. the character and design of the proposed alternative development will not result in a material diminution of the privacy of adjoining residential property; and
2. the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity, taking into account existing structures and open space; and
3. the proposed alternative development will not reduce the amount of open space on the parcel proposed for alternative development to less than 40% of the total net lot area; and
4. any area of shadow cast by the proposed alternative development upon an adjoining parcel of land during daylight hours will be no larger than would be cast by a structure constructed pursuant to the underlying district regulations, or will have no more than a *de minimus* impact on the use and enjoyment of the adjoining parcel of land; and
5. the proposed alternative development will not involve the installation or operation of any mechanical equipment closer to the adjoining parcel of land than any other portion of the proposed alternative development, unless such equipment is located within an enclosed, soundproofing structure; and
6. the proposed alternative development will not involve any outdoor lighting fixture that casts light on an adjoining parcel of land at an intensity greater than permitted by this code; and

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7. the architectural design, scale, mass, and building materials of any proposed structure or addition are aesthetically harmonious with that of other existing or proposed structures or buildings on the parcel proposed for alternative development; and
8. the wall of any building within a setback area required by the underlying district regulations shall be improved with architectural details and treatments that avoid the appearance of a "blank wall"; and
9. the proposed development will not result in the destruction or removal of mature trees within a setback required by the underlying district regulations, with a diameter at breast height of greater than ten (10) inches, unless the trees are among those listed in section 24-60(4)(f) of this code, or the trees are relocated in a manner that preserves the aesthetic and shade qualities of the same side of the lot; and
10. any windows or doors in any building to be located within an interior setback required by the underlying district regulations shall be designed and located so that they are not aligned directly across from facing windows or doors on buildings located on an adjoining parcel of land; and
11. total lot coverage shall not be increased by more than twenty percent (20%) of the lot coverage permitted by the underlying regulations; and
12. the area within an interior side setback required by the underlying district regulations located behind the front building line will not be used for off-street parking except:
 - a. in an enclosed garage where the garage door is located so that it is not aligned directly across from facing windows or doors on buildings located on an adjoining parcel of land; or
 - b. if the off-street parking is buffered from property that abuts the setback area by a solid wall at least six (6) feet in height along the area of pavement and parking, with either:
 - i. articulation to avoid the appearance of a "blank wall" when viewed from the adjoining property, or
 - ii. landscaping that is at least three (3) feet in height at time of planting, located along the length of the wall between the wall and the adjoining property, accompanied by specific provision for the maintenance of the landscaping, such as but not limited to, an agreement regarding its maintenance in recordable form from the adjoining landowner; and
13. any structure within an interior side setback required by the underlying district regulations;

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- a. is screened from adjoining property by landscape material of sufficient size and composition to obscure at least sixty percent (60%) of the proposed alternative development to a height of the lower fourteen (14) feet of such structure at time of planting; or
 - b. is screened from adjoining property by an opaque fence or wall at least six(6) feet in height that meets the standards set forth in paragraph (f) herein; and
14. any proposed alternative development not attached to a principal building, except canopy carports, is located behind the front building line; and
 15. any structure not attached to a principal building and proposed to be located within a setback required by the underlying district regulations shall be separated from any other structure by at least three (3) feet; and
 16. when a principal building is proposed to be located within a setback required by the underlying district regulations, any enclosed portion of the upper floor of such building shall not extend beyond the first floor of such building within the setback; and
 17. the eighteen (18) inch distance between any swimming pool and any wall or enclosure required by this code is maintained; and
 18. safe sight distance triangles shall be maintained as required by this code; and
 19. the parcel proposed for alternative development will continue to provide on-site parking as required by this code; and
 20. the parcel proposed for alternative development shall satisfy underlying district regulations or, if applicable, prior zoning actions or administrative decisions issued prior to the effective date of this ordinance (August 2, 2002), regulating lot area, frontage and depth.
 21. the proposed development will meet the following:
 - A. interior side setbacks will be at least three (3) feet or fifty percent (50%) of the side setbacks required by the underlying district regulations, whichever is greater.
 - B. Side street setbacks shall not be reduced by more than fifty percent (50%) of the underlying zoning district regulations;
 - C. Interior side setbacks for active recreational uses shall be no less than seven (7) feet in EU, AU, or GU zoning district or three (3) feet in all other zoning districts to which this subsection applies;
 - D. Front setbacks will be at least twelve and one-half (12 ½) feet or fifty percent (50%) of the front setbacks required by the underlying district regulations, whichever is greater;
 - E. Rear setbacks will be at least three (3) feet for detached accessory structures and ten (10) feet for principal structures.

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(g) Notwithstanding the foregoing, no proposed alternative development shall be approved upon demonstration that the proposed alternative development:

1. will result in a significant diminution of the value of property in the immediate vicinity; or
2. will have substantial negative impact on public safety due to unsafe automobile movements, heightened vehicular-pedestrian conflicts, or heightened risk of fire; or
3. will result in a materially greater adverse impact on public services and facilities than the impact that would result from development of the same parcel pursuant to the underlying district regulations; or
4. will combine severable use rights obtained pursuant to Chapter 33B of this code in conjunction with the approval sought hereunder so as to exceed the limitations imposed by section 33B-45 of this code.

(h) Proposed alternative development under this subsection shall provide additional amenities or buffering to mitigate the impacts of the development as approved, where the amenities or buffering expressly required by this subsection are insufficient to mitigate the impacts of the development. The purpose of the amenities or buffering elements shall be to preserve and protect the quality of life of the residents of the approved development and the immediate vicinity in a manner comparable to that ensured by the underlying district regulations. Examples of such amenities include but are not limited to: active or passive recreational facilities, common open space, additional trees or landscaping, convenient covered bus stops or pick-up areas for transportation services, sidewalks (including improvements, linkages, or additional width), bicycle paths, buffer areas or berms, street furniture, undergrounding of utility lines, and decorative street lighting. In determining which amenities or buffering elements are appropriate for a proposed development, the following shall be considered:

- A. the types of needs of the residents of the parcel proposed for development and the immediate vicinity that would likely be occasioned by the development, including but not limited to recreational, open space, transportation, aesthetic amenities, and buffering from adverse impacts;
- B. and the proportionality between the impacts on residents of the proposed alternative development and the immediate vicinity and the amenities or buffering required. For example, a reduction in lot area for numerous lots may warrant the provision of additional common open space. A reduction in a particular lot's interior side setback may warrant the provision of additional landscaping.

Section 33-311(A)(4)(b) Non-use variances from other than airport regulations. Upon appeal or direct application in specific cases, the Board shall hear and grant applications for non-use variances from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance

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maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.

Section 33-311(A)(4)(c) Alternative non-use variance standards. Upon appeal or direct application in specific cases to hear and grant applications from the terms of the zoning and subdivision regulations for non-use variances for setbacks, minimum lot area, frontage and depth, maximum lot coverage and maximum structure height, the Board (following a public hearing) may grant a non-use variance for these items, upon a showing by the applicant that the variance will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the non-use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum non-use variance that will permit the reasonable use of the premises; and further provided, no non-use variance from any airport zoning regulation shall be granted under this subsection.

Chapter 28 Subdivisions- Section 19(A) Variances

(a) *Authority of Community Zoning Appeals Board.* The County's Community Zoning Appeals Board may authorize a variance from these regulations. The Community Zoning Appeals Board may vary the regulations so that substantial justice may be done, provided that such variance will not have the effect of nullifying the intent and purpose of the overall community plan. In granting any variance, the County's Community Zoning Appeals Board shall prescribe any conditions that are deemed necessary to or desirable for the public interest. In making its findings, the Community Zoning Appeals Board shall take into account among other things the nature of the proposed use of the land and the existing use of the land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. No variance shall be granted unless the County's Community Zoning Appeals Board finds, among other things, that all three (3) of the following conditions exist in regard to the land concerned:

- ① That there are special circumstances or conditions affecting the property and that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land.
- (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
- ③ That the granting of the variance will not be detrimental to the public welfare or injurious to the other property in the territory in which the property is situated.

G. NEIGHBORHOOD SERVICES:

DERM
Public Works
Parks
MDTA

No objection*
No objection*
No objection
No objection

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Fire Rescue
Police
Schools

No objection
No objection
6 students

*Subject to the conditions indicated in their memoranda.

H. ANALYSIS:

Due to Hurricane Wilma, the Department was unable to meet all Code-mandated deadlines for the November 15, 2005 hearing. Therefore, this application was deferred to the December 13, 2005 meeting. This application was also deferred from the September 6, 2005 meeting at the applicant's request with leave to amend. The subject property is located on the west side of S.W. 132 Avenue, approximately 660' north of S.W. 192 Street, and roughly one-half (1/2) mile east of and within the Urban Development Boundary line. The applicant is seeking a zone change from AU, Agricultural District, to EU-M, Estate Modified One Family District. Requests are also being sought to permit a single-family residence setback 65' from the front (east) property line where a maximum setback of 50' is permitted, to waive the zoning regulations requiring half section line rights-of-way to be 70' wide to permit 25' (35' required) of dedication for the west half of S.W. 132 Avenue, and to permit the subject property with no sidewalks and street lighting. The surrounding area where the subject property lies is characterized by EU-M zoned single-family residences, plant nurseries and a horse ranch.

The Department of Environmental Resources Management (DERM) has **no objections** to this application and has indicated that this application meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida. However, the applicant will have to comply with all DERM conditions as set forth in their memorandum pertaining to this application. The **Public Works Department** has **no objections** to this application. They have indicated that road dedications and improvements will be accomplished through the recording of a plat. According to their memorandum, this application meets traffic concurrency criteria and will generate 12 additional PM daily peak hour vehicle trips. However, the distribution of these trips to the adjacent roadways does not exceed the acceptable levels of service (LOS) of roadways which are currently operating at LOS "A", "B" and "C". **Miami-Dade Public Schools (MDCPS)** has indicated that the proposed zoning will bring 6 additional **students** into the area's public schools. They indicate that South Miami Heights Elementary, Mays Middle and Miami Southridge Senior High School are the schools that will be impacted by this development, which are currently operating at 92%, 97% and 117% of the Florida Inventory of School Houses (FISH) utilization. However, Miami Southridge Senior High School is the only one that exceeds the 115% FISH MDCPS capacity. The applicant has voluntarily proffered a covenant to the School Board in order to provide a monetary donation, over and above impact fees as required by the Educational Facilities Impact Fee Ordinance.

Approval of this application to rezone the property from AU to EU-M would permit the applicant to provide additional housing units for the community. The Land Use Plan (LUP) Map of the Comprehensive Development Master Plan (CDMP) designates this site for **Estate Density Residential** use, which permits a minimum of 1 to a maximum of 2.5 units per gross acre for a maximum total of 12 residential units on the site. The applicant has submitted plans indicating the proposed development of this parcel of land with 9 estate-

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sized residential lots. Additionally, the applicant has proffered a covenant restricting the development of the site to the proposed site plan and limiting the development of the site to a maximum of 9 units as depicted in the submitted plans. As such, the approval of this application, with the proffered covenant, is **consistent** with the LUP map of the CDMP.

The Department of Planning and Zoning supports the zone change to EU-M (request #1). Staff notes that the subject property is located in a section of land (2-56-39) primarily developed under the EU-M and AU zoning district regulations. The proposed EU-M zoning will be in keeping with the development trend in the area consisting of EU-M zoned single-family residential developments. As such, the requested zone change to EU-M would be **compatible** with the current EU-M zoning of single-family residential developments in the area and **consistent** with the Estate Density land use designation of the LUP Map of the CDMP. As such, staff recommends approval of the zone change to EU-M, subject to the Board's acceptance of the proffered covenant.

The alternative site development option (ASDO) standards, Section 33-311(A)(14), provide for the approval of a zoning application which can demonstrate at a public hearing that the development requested is in compliance with the applicable alternative site development option standards and does not contravene the enumerated public interest standards as established. Further, the alternative site development option (ASDO) standards provide numerical criteria relief for reduced setbacks. However, the ASDO standards do not provide relief for setbacks that exceed the maximum, which is the case of request #2, to permit a single-family residence setback 65' from the front (east) property line where a 50' maximum setback is permitted. As a result, request #2 cannot be analyzed under the ASDO standards and should be denied without prejudice under same.

If requests #2 and #3 are analyzed under the Alternative Non-Use Variance (ANUV) Standards, Section 33-311(A)(4)(c), the applicant would have to prove that these requests are due to an unnecessary hardship and that, should the requests not be granted, such denial would not permit the reasonable use of the premises. However, since the property can be utilized in accordance with the zoning regulations, staff is of the opinion that requests #2 and #3 cannot be approved under the Alternative Non-Use Variance Standards and should be denied without prejudice under same.

When requests #2 and #3 are analyzed under Section 33-311(A)(4)(b), the non-use variance (NUV) standards, staff is of the opinion that the approval of requests #2 and #3 would be **compatible** with the surrounding area, would not negatively affect the stability and appearance of the community and would not be a detriment to same. According to the plans submitted, the existing single-family residence on the proposed lot will have sufficient space to minimize the impact on adjacent properties. Furthermore, the proposed lot configuration allows for compliance with all lot area and frontage requirements of the underlying zoning district, and will not result in an obvious departure from the aesthetic character of the immediate vicinity. As a result, staff recommends approval with conditions of requests #2 and #3 under the NUV Standards.

The requested waiver of the required street lighting and sidewalks (request #4) would, in staff's opinion, be a public safety issue for children and their families since street lights and sidewalks are necessary for pedestrians walking or individuals riding their bicycles. Chapter 28 states that no request to waive the subdivision regulations shall be granted

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unless the Community Zoning Appeals Board (CZAB) finds that there are special circumstances or conditions affecting the property and that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land; that the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and that the granting of the variance will not be detrimental to the public welfare or injurious to the other properties in the territory in which the property is situated. Staff is of the opinion that approval of this request would set a precedent for future similar requests of this kind in the area. Staff notes that in order to preserve the rural character of the community, this Board has consistently recommended and approved waivers of sidewalks and street lights. However, given staff's concern regarding public safety issues and the fact that the applicant has not demonstrated that denial of this request would preclude the reasonable use of the land, staff recommends denial without prejudice of this request.

Accordingly, staff recommends approval of the zone change to EU-M (request #1), subject to the Board's acceptance of the proffered covenant, approval with conditions of requests #2 and #3 under Section 33-311(A)(4)(b) (NUV) and denial without prejudice of request #4 under Section 33-311(A)(4)(b) (NUV), denial without prejudice of requests #2 through #4 under Section 33-311(A)(4)(c) (ANUV), and denial without prejudice of request #2 under Section 33-311(A)(14).

I. RECOMMENDATION:

Approval of the zone change to EU-M (request #1), subject to the Board's acceptance of the proffered covenant, approval with conditions of requests #2 and #3 under Section 33-311(A)(4)(b) (NUV) and denial without prejudice of request #4 under Section 33-311(A)(4)(b) (NUV), denial without prejudice of requests #2 through #4 under Section 33-311(A)(4)(c) (ANUV), and denial without prejudice of request #2 under Section 33-311(A)(14).

J. CONDITIONS:

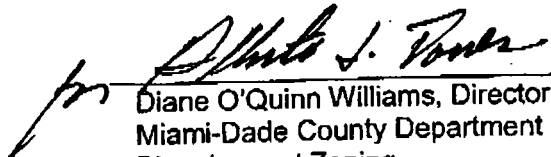
For requests #2 and #3 only:

1. That a site plan be submitted to and meet with the approval of the Director of the Department of Planning and Zoning upon the submittal of an application for a building permit and/or Certificate of Completion; said plan to include, but not limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Bombalier," as prepared by Kelley Engineers of Dade consisting of Sheet 1 dated stamped received 9/15/05 and Sheet A-1 dated stamped received 12/20/04. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the approved plan.

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4. That the applicant submit to the Department for its review and approval a landscaping plan which indicates the type and size of plant material prior to the issuance of a building permit and to be installed prior to the issuance of a Certificate of Completion.
5. That the fence surrounding the subject property be removed at such time as development commences on the property to the west.

DATE INSPECTED: 08/01/05
DATE TYPED: 08/09/05
DATE REVISED: 08/10/05; 08/11/05; 08/15/05, 08/29/05, 09/12/05, 10/14/05;
11/04/05; 11/09/05; 11/18/05
DATE FINALIZED: 11/18/05
DO:QW:AJT:MTF:LVT:CSE:JV


Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning

APPELLANT'S AFFIDAVIT OF STANDING

(must be signed by each Appellant)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Before me the undersigned authority, personally appeared LAZARO BOMBALIER
(Appellant) who was sworn and says that the Appellant has standing to file the attached appeal
of a Community Zoning Appeals Board decision.

The Appellant further states that they have standing by virtue of being of record in Community
Zoning Appeals Board matter because of the following:

(Check all that apply)

- ☐ 1. Participation at the hearing
☒ 2. Original Applicant
☐ 3. Written objections, waivers or consent

Appellant further states they understand the meaning of an oath and the penalties for perjury,
and that under penalties of perjury, Affiant declares that the facts stated herein are true.

Further Appellant says not.

Witnesses:

Signature

Print Name

Signature

Print Name

Appellant's signature

Print Name

Print Name

Sworn to and subscribed before me on the 30 day of December, year 2005.

Appellant is personally know to me or has produced FL DL 8514-520-66-060-0 as
identification.

Notary

(Stamp/Seal)

Commission Expires:

